



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/819,465	03/28/2001	Michael K. Weibel	1690-P02146US1	3425
110	7590	10/06/2004	EXAMINER	
DANN, DORFMAN, HERRELL & SKILLMAN 1601 MARKET STREET SUITE 2400 PHILADELPHIA, PA 19103-2307			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/819,465	WEIBEL, MICHAEL K.	
	Examiner	Art Unit	
	Lien T Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9 is/are rejected.
- 7) ☒ Claim(s) 10-21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1761

Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Anderson.

Anderson discloses a barrier film which is used to package food products. The film is provided with a textured surface and is formed of edible polymeric material. Edible films are formed from proteins, cellulose, starches, dextrins, plant hydrocolloids, waxes, fat products, monoglycerides or their derivatives or mixtures of these materials. Only one of the surface of the film is provided with texturing. For instance, the inner surface of the film is provided with a series of elongated, substantially linear protrusions on its surface. (see col. 3 lines 40-42, col. 5 lines 23-45, col. 6 lines 23-60)

Anderson discloses an edible film having protrusions on one of the surface. The protrusions are the same as the claimed protuberances. The film can contain a mixtures of materials cited above. The material includes monoglycerides or fat products which are considered lipid material. Thus, lipid is incorporated in the film. Since the film is used to package food product, a comestible substance is integrated with the edible film. The film differs from the claimed film in the way in which it is made. However, determination of product-by-process claim is based on the product itself, even though such claim is limited and defined by process. (see In Re Thorpe, 227 USPQ 964)

Claims 10-21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 9 would be allowable if the limitation of claim 21 is added to claim 9 because there is no suggestion in Anderson to have the protuberance on the side which is in contact with the comestible substance. Since

Art Unit: 1761

claims 10-20 are either directly or indirectly depends from claim 21, they all also objected to; however, only the limitation in claim 21 defines over the prior art.

If applicant decides to add the limitation of claim 21 into claim 1, the following language is suggested --- wherein at least the second side of said film sheet is directly adhered to said comestible substance---.

In the response filed July 7, 2004, applicant requests that the restriction is withdrawn. The request is respectfully denied for the same reason set forth in the previous office action.

In the response filed July 7, 2004, applicant argues there is no disclosure in the Anderson patent of an edible film having protrusions on one of the surfaces. This argument is not persuasive. Anderson discloses on column 5 lines 24-25, " both of the plies may be formed of such an edible barrier"; thus, both plies 20 and 30 can be formed of edible barrier which will make the film to be an edible film. Anderson discloses the inner surface of the inner film or inner surface of the outer film may be provided with texturing. This texturing is the same as the claimed protuberances or protrusions and the texturing is on one of the surfaces. It is unclear what applicant means by the edible polymeric barrier material of Anderson is not a self-supporting sheet. If the edible barrier is made into a sheet, it is inherent that it is a self-supporting sheet. Anderson discloses both of the plies can be made of edible material. Applicant further argues the microscopic protuberances as claimed refer to something so small or fine as to be not clearly distinguishable without the use of microscope and this clearly distinguishes from the Anderson texturing. Applicant does not define microscopic

Art Unit: 1761

protuberances in the specification and the claims do not have any limitation which distinguishes the protuberances from the texturing of Anderson. Also, applicant showed the film as claimed during a personal interview and the examiner recalls that the protuberances can be seen without a microscope. Applicant makes reference to exhibit A; however, such exhibit is not found in the response.

Applicant's arguments filed July 6, 2004 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

October 4, 2004


LIEN TRAN
PRIMARY EXAMINER
Group 1700